

# Establishing a COVID-19 Charitable Assistance Program

**A webinar presented in partnership with Perlman & Perlman, LLP**

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WEDNESDAY, APRIL 15, 2020 | 2:00-3:00 PM ET



# Presenters



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To ask a question, please type it into the **Q&A box**.  
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## COVID-19

# Overview

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1. Basis for disaster relief and emergency hardship assistance programs under IRC section 501(c)(3)
2. When can a 501(c)(3) organization establish an emergency hardship assistance program?
3. Key legal considerations for structuring emergency hardship assistance program
  - a. Eligible beneficiaries
  - b. Conducting a needs assessment
  - c. Determining appropriate award amounts
  - d. Documentation and recordkeeping
4. Tax implications of receiving assistance funds
5. Setting up an employer-sponsored assistance program

## COVID-19

# Disaster Relief and Emergency Hardship

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## Both Are Charitable

For purposes of section 501(c)(3), the term charitable is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

See Treas. Reg. 1.501(c)(3)-1(d)(2).

## COVID-19

Can a 501(c)(3) tax-exempt organization conduct an emergency hardship assistance program if emergency hardship assistance is not part of the stated purposes of my organization?

**Federal law: No IRS pre-approval is required.**

### Possible IRS Form 990 disclosures

- ✓ Part III, Statement of Program Service Accomplishments
- ✓ Schedule I, Grants and other assistance given to organizations or individuals within the U.S.
- ✓ Schedule F, Grants and other assistance given to organizations or individuals outside the U.S.
- ✓ Schedule M, Noncash contributions received (e.g., donations of food or other supplies to distribute to families in need)

## COVID-19

**Can a 501(c)(3) tax-exempt organization conduct an emergency hardship assistance program if emergency hardship assistance is not part of the stated purposes of my organization?**

**State law: It depends...**

- Are the organization's legal purposes sufficiently broad?
  - Check certificate of incorporation, and consider if an amendment is needed.

### **Considerations for fundraising for COVID-19 relief programs:**

- Is the organization soliciting charitable contributions in states where it is not registered to do so?
  - Organizations are required to register to solicit charitable contributions in each applicable state. About 38 states require organizations to register before soliciting donations.
- Is the organization soliciting funds specifically for COVID-19 relief efforts, or for unrestricted funds?
  - Gift restrictions can arise explicitly through a donor's specific instructions, as well as implicitly, such as when a donor responds to a specific solicitation request which states or implies that funds raised will be used for a specified purpose.

# Structuring an Emergency Hardship Assistance Program

## **#1: The program must be designed and operated to assist a charitable class.**

A charitable class must be large enough or sufficiently indefinite (open-ended) such that the community, as a whole, benefits when a charity provides assistance.

➤ *Note: The program cannot be designed to benefit a pre-selected group of people.*

### **Large**

Ex: All families throughout a state/city facing financial hardship as a result of the COVID-19 outbreak;  
Organizations serving specific groups (e.g., racial/ethnic groups; domestic workers; restaurant workers)

### **Indefinite**

Ex: Residents of a small county in need of financial assistance due to a current or future disaster/emergency.

## Structuring an Emergency Hardship Assistance Program

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**#1: *The program must be designed and operated to assist a charitable class.***

***Additional steps to ensure that the program benefits a sufficiently broad charitable class***

- Publicize the availability of funds online, through other community organizations
- Encourage broad support through fundraising
- Include diverse participation in program oversight (organization leadership; program selection committee membership)



# Structuring an Emergency Hardship Assistance Program

## #2: Conduct a Needs Assessment

*Limit beneficiaries to individuals/families whose resources are insufficient to meet basic needs.*

Level of needs assessment will depend on whether the program is assisting with short term vs. long-term needs

- **Short-term** Emergency assistance (e.g., goods, services) in the immediate aftermath of a disaster can be provided without a showing of financial need.
- **Long-term** Develop an application process to gather information about the individual's/family's circumstances and needs.

## Structuring an Emergency Hardship Assistance Program

### #3: Award amounts must be based on an objective determination of need

- An organization's decision to provide financial assistance should be based on a reasonable determination that the individual's financial resources, such as available cash, expenses, other financial obligations, assets that can be disposed of without causing further personal hardship, and anticipated cash flow (income, insurance proceeds, etc.), will be insufficient to provide for timely coverage of his/her existing obligations and basic needs.
- Evaluation can take into consideration all facts and circumstances
- Grants to replace lost income rather than meet basic living needs would generally be viewed as serving personal and private interests, which is impermissible.

***Tip:** Make sure grant amounts are not based on the individual's lost income, but rather, based on an objective assessment of need.*

- The evaluation of need should be made at the time the grant is made

## Structuring an Emergency Hardship Assistance Program

***#4: Maintain adequate records to demonstrate that the program furthered charitable purposes, and recipients were needy or distressed***

### Short-term

- criteria for disbursing assistance (e.g., sudden loss of job or home)
- date/place of distribution
- estimated number of individuals assisted
- the charitable purpose intended to be accomplished, and
- the cost of providing the aid
- the composition of the selection committee approving the assistance

## Structuring an Emergency Hardship Assistance Program

### *#4: Maintain adequate records to demonstrate that the program furthered charitable purposes, and recipients were needy or distressed*

#### Long-term

- a complete description of the assistance provided
- costs associated with providing the assistance
- the purpose for which the aid was given
- the charity's objective criteria for disbursing assistance under the program
- how the recipients were selected
- the name, address, and amount distributed to each recipient
- any relationship between a recipient and officers, directors, or key employees of, or substantial contributors to, the charitable organization, and
- the composition of the selection committee approving the assistance

## COVID-19

# Tax Implications of Receiving Emergency Financial Assistance

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Financial assistance that a 501(c)(3) tax-exempt organization gives to individuals or families in need for emergency hardship situations are excludible from the recipient's gross income (and therefore not subject to tax) as a gift under Section 102 of the Internal Revenue Code.

Note: May also be excludible from gross income as a “qualified disaster relief payment”

## COVID-19

# Employer-Sponsored Assistance Programs

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### *Three Charitable Options*

- **Public charity:** Diversely funded; May provide disaster or emergency hardship assistance to their employees and their family members, as long as a related employee does not exercise excessive control over the organization.
- **Donor-advised fund and private foundations:** Typically primarily funded by the employer; only allowed to provide assistance to employees or family members if they've been affected by a "qualified disaster," which includes a "Presidentially declared disaster." COVID-19 was officially declared a "qualified disaster" on March 13, 2020. As such, employer-sponsored DAFs and private foundations can provide "qualified disaster relief payments" to employees and their family members as long as there are safeguards in place to make sure the payments are for charitable purposes.

## Employer-Sponsored Assistance Programs

### *What is included in “Qualified Disaster Relief Payments”?*

#### **Includes:**

- reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster,
- reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence (rented or owned) due to a qualified disaster, and
- reasonable and necessary expenses incurred for the repair or replacement of the contents of a personal residence due to a qualified declared disaster.

#### **Excludes:**

- payments for expenses otherwise paid for by insurance or other reimbursements, or,
- income replacement payments, such as payments of lost wages, lost business income, or unemployment compensation

## COVID-19

# Employer-Sponsored Assistance Programs

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## *Program Requirements*

- Employer-sponsored assistance programs should follow the program requirements discussed above (e.g., support of a charitable class, and selection of recipients based on an objective determination of need, and adequate documentation of recipients' need for assistance).
- Selection of beneficiaries must be made using either an independent selection committee or adequate substitute procedures to ensure that any benefit to the employer is incidental and tenuous.
  - *The selection committee is considered "independent" if a majority of the members of the committee are not in a position to exercise substantial influence over the affairs of the employer.*
- Pursuant to statutory restrictions applicable to donor-advised funds, no payment may be made from the DAF to or for the benefit of any director, officer, or trustee of the sponsoring public charity, or members of the fund's selection committee.



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**Thank You!**